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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

D.G.,

Plaintiff and Respondent,

v.

P.W.,

Defendant and Appellant.

2d Civil No. B265230  
(Super. Ct. No. D365685)  
(Ventura County)

P.W. appeals from a domestic violence restraining order issued against her under the Domestic Violence Prevention Act (DVPA). (Fam. Code, § 6200 et seq.)<sup>1</sup> P.W. contends the order is void because she did not consent to have the matter heard by the commissioner, insufficient evidence supports the order and the temporary order that preceded it, and the court

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<sup>1</sup> All further statutory references are to the Family Code, unless otherwise stated.

should have appointed minor's counsel for her grandson, J.G. We affirm.

### BACKGROUND

D.G. is P.W.'s adult daughter. D.G.'s son, J.G., is P.W.'s grandson.

In October 2014, D.G. filed an application for a temporary DVPA restraining order to protect her immediate family from P.W. D.G. alleged that P.W. hit J.G. over the head four times with a cane and told the boy he would "get in trouble" if he told anyone. D.G. also alleged that P.W. disturbed her privacy when she came to D.G.'s home and left a note on her car.

A court commissioner acting as temporary judge issued a temporary restraining order directing P.W. to stay away from D.G., her husband, and her children. It directed P.W. not to harass or contact the family, directly or indirectly.

The court set D.G.'s request for a permanent restraining order for an evidentiary hearing on October 29, 2014. P.W. and D.G. appeared that day and signed a "Consent for Court Assignment" in which they agreed the matter would be tried by the commissioner. The form was initially omitted from the record on appeal, but we granted D.G.'s motion to augment the record to include it.

The court continued the hearing several times, reissuing the temporary restraining order each time. P.W. violated the temporary restraining order by e-mailing D.G. twice, and suffered a criminal conviction as a result.

At the hearing on the request for a permanent restraining order, J.G. testified that P.W. hit him on the head with her cane one time and it hurt. He said he is scared of P.W. The trial court found him to be the "most credible witness here."

D.G. testified that J.G. told her about the incident in April 2014. She did not know when the incident happened. J.G. started acting out in school and had nightmares. A therapist met with him and reported the abuse to Child Protective Services. D.G. did not seek a protective order until October because the investigation was delayed and D.G. gave birth to a child in September 2014. D.G. and J.G. saw P.W. only once after J.G. reported the abuse. It was on Mother's Day, and D.G. and P.W. argued. P.W. left a note on D.G.'s car when she did not have permission to be at her home. D.G. was scared.

P.W. testified that she never hit J.G. She believed D.G. was retaliating against her because she reported D.G. and her husband to Child Protective Services in December 2013. J.G. was covered with flea bites, complained that D.G.'s husband hit him, and had several bruises. She took photographs of the flea bites and bruises. She said she could not have hit J.G. in April because she did not see him between New Year's Day and Mother's Day, and had no contact with him after Mother's Day. She left a note for D.G. in August but it was an expression of love and she was never told her she was not welcome at D.G.'s house. She thought the temporary restraining order only prohibited physical contact.

An officer testified that when she investigated D.G.'s allegations, P.W. denied them and there were no marks on her cane. P.W.'s mother (J.G.'s great-grandmother) testified she saw J.G. run to P.W. and hug her on Mother's Day 2014.

The commissioner issued a restraining order protecting D.G. and J.G. from P.W. for a three-year period.

## DISCUSSION

### *Consent to Commissioner*

A domestic violence restraining order issued by a court commissioner is void if the restrained person does not consent to submit the cause to the commissioner. (Cal. Const., art. VI, § 21; *Michaels v. Turk* (2015) 239 Cal.App.4th 1411, 1414, 1417.) But the augmented record shows that P.W. signed a written consent.

### *Minor's Counsel*

The court was not required to appoint minor's counsel. "[A] minor 12 years of age or older may appear in court without a guardian, counsel, or guardian ad litem, for the purpose of requesting or opposing a request for . . . [¶] . . . [¶] (C) [a] protective order pursuant to Division 10 (commencing with Section 6200) of the Family Code." (Code Civ. Proc., § 372, subd. (b)(1).)

### *Evidence Supporting the Temporary Restraining Order*

P.W. contends the note she left on D.G.'s car did not support a temporary restraining order. We disagree.

A court may issue a DVPA temporary restraining order if an affidavit shows "to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§§ 6300, 6220.) "Abuse" is not limited to physical acts. (§ 6203.) "Abuse" includes any conduct that can be enjoined under section 6320, including "disturbing the peace of the other party." (§§ 6320, subd. (a), 6203.) Disturbing the peace includes unwelcome contact that destroys the mental or emotional calm of the other party. (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1146.) We review the order for abuse of discretion. (*Id.* at p. 1143.)

P.W. came to D.G.'s house and left a note on her car after she "made [P.W.] aware . . . to respect privacy and also [that she was] not welcome." This occurred in the context of the conflict that arose when D.G. reported P.W. to a therapist and law enforcement investigator for abusing J.G. The affidavit provided reasonable proof of conduct disturbing D.G.'s mental and emotional calm sufficient to support the order.

*Evidence Supporting the Permanent Order*

P.W. contends there was not sufficient evidence to support the permanent order. We again disagree.

After a noticed hearing, the court may issue a DVPA restraining order for up to five years. (§ 6345, subd. (a).) It is the petitioner's burden to establish abuse by a preponderance of the evidence. (*Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 137.)

We review the order for abuse of discretion and find none. J.G.'s testimony that P.W. hit him was reasonable proof to support the order protecting him. D.G.'s testimony that P.W. came to her house without permission and violated the temporary restraining order twice by e-mailing her, causing her to feel "scared," "threatened" and "shocked," was sufficient proof to support the order protecting her.

P.W. points to conflicts in the evidence, uncertainty and inconsistency about the date of the abuse, and a concern that J.G.'s testimony may have been coached, among other things. "The family court's resolution of conflicts in the evidence and credibility assessments are binding on this court." (*Schneer v. Llauro* (2015) 242 Cal.App.4th 1276, 1287.) Substantial evidence supports the trial court's findings.

DISPOSITION

The order is affirmed. Respondent shall recover her costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Michelle M. Castillo, Commissioner

Superior Court County of Ventura

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P.W., in pro. per., for Defendant and Appellant.

Morgan Law Firm and Gina S. Berry, for Plaintiff  
and Respondent.